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ABSTRACT

This report attempts to assess the impact on affordable higher education in California of the state's "three strikes" law enacted early in 1994. The report estimates that, as written, the state would not only have to use all expected increased revenues but also find additional amounts to maintain the increased prison population. It suggests three modifications, which by removing certain types of felonies from the provisions under the law, would reduce projected costs. The report also notes that because higher education competes with other state services for funds, higher correctional costs will impact directly on funds available for education. The report foresees three major public policy options should this occur: severely limit enrollment in public colleges and universities; impose higher student charges; or increase taxes. It goes on to note that it is inconsistent with current realities of state finance to simultaneously advocate for the law, as written, and the preservation of accessible and affordable public colleges and universities. Six graphs chart some of the data on which the report is based. (CH)

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THE CALIFORNIA
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# "Three Strikes" Law Could Undermine College Opportunity

October 1994

The "Three Strikes, You're Out" law enacted earlier this year may be a time bomb that could, *if implemented in its present form*, undermine the college opportunities of thousands of Californians.

Although the "Three Strikes" law is complex, the policy goal underlying it is simple: keep habitual violent criminals off the streets. Whereas the previous law provided judges with a wide range of discretion in sentencing repeat felons, the present "Three Strikes" law mandates specific sentences that are up to three times longer. For instance, the new law mandates that judges:

- double the normal sentence for *any* second felony if the first conviction was for a *violent* or *serious* crime; and
- triple the normal sentence, with a minimum of twenty-five years, for *any* third felony if the other two were for *violent* or *serious* crimes.

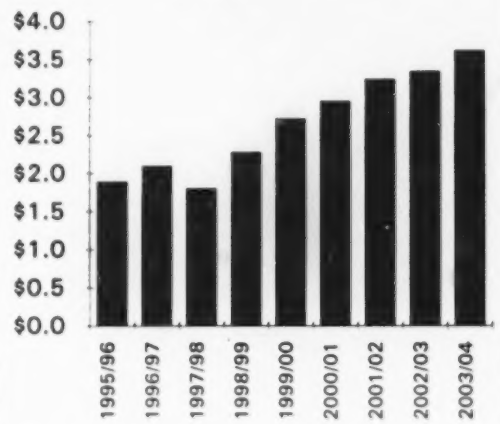
Of particular concern to many authorities in the corrections field are not just the lengths of the sentences—nor the fact that they are mandated. At issue, rather, are the legal and financial implications of mandating lengthy sentences for those who had earlier committed "violent" or "serious" felonies, but whose *second* or *third* offenses were neither violent nor serious within the meaning of the law. (See sidebar, page 5).

As the following analysis reveals, a significant portion of the additional costs of the "Three Strikes" law

GRAPH ONE

**Total Costs of the "Three Strikes" Law**

(In Billions)




*Note:* These are the costs for operations and construction above the normal growth in the prison population.

*Source:* Department of Corrections, Legislative Estimates Unit, "Population and Fiscal Estimate of the 'Three Strikes' Initiative," February 28, 1994.

**Using an analysis prepared for The California Higher Education Policy Center by William H. Pickens, senior partner, MGT Consultants, Sacramento, California, the Center has attempted to respond to a series of questions about the "Three Strikes" law, its costs, its possible modifications, and its likely impact on affordable higher education in California. This analysis is based on publicly available fiscal data prepared for the 1994 legislative debate by the California Department of Finance and the Department of Corrections, the most recent data available at this time. We make no claim to expertise in the criminal justice system in California. Although we do explore the lower costs of several modifications to the "Three Strikes" law, we are not qualified to urge any particular changes, and we do not do so. Nor do we take issue with the primacy of public safety or the state's need for more stringent rules for keeping habitual, violent criminals off our streets. We take no position on Proposition 184, which would place the "Three Strikes" law largely beyond legislative amendment or reconsideration. But our concern for educational opportunity in California compels examination of issues of public finance that have major consequences for the college opportunities of Californians.**

derives from this provision: locking up defendants for extensive time, even when their last offense was neither a "violent" nor a "serious" felony.

## How Much Will the "Three Strikes" Law Cost?

As written, the provisions of the "Three Strikes" law will dramatically increase the Department of Correction's costs by requiring expenditures for operations and construction above normal growth. Graph One (see front page) projects increased costs ranging from just under $2 billion in 1995–96 to some $3.5 billion in 2003–04.

*For each year after the implementation of the mandated longer sentences, the state will have to use* all *available dollars for the "Three Strikes" law, and then find between $630 million and $1.8 billion* more *in other annual budgets to maintain the increased prison population.*

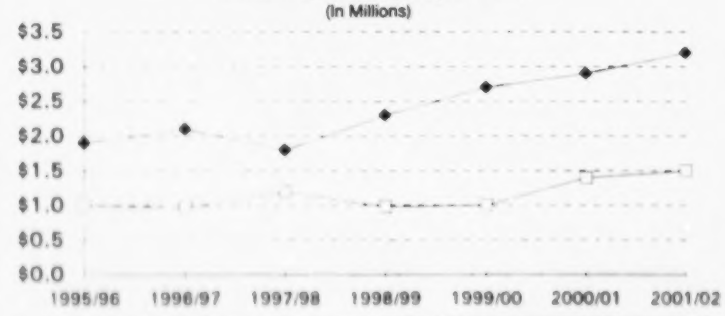
At first glance, there would appear to be little problem in funding the additional needs of the Department of Corrections (as noted in Graph One), as well as the increasing needs of higher education; general fund revenues, after all, are expected to grow from about $41 billion in 1994–95 to some $66 billion over the next six years. But the impact of these increases is exacerbated by a "hardening" of the state's "fiscal arteries." Constitutional or statutory requirements—such as state debt payments, federal matching fund mandates, and Proposition 98, which provides constitutional guarantees for funding for K–12 and the community colleges—automatically commit public dollars. The most conservative estimate is that, at most, 30 percent of the annual increase in state general funds will be available for appropriation each year. This is a serious problem.

Using official estimates of the California departments of corrections and finance, Graph Two indicates that the "Three Strikes" law uses all of the increased revenues available for appropriation and then some. For example, in 1996–97, the costs resulting from the "Three Strikes" law are estimated at $2.1 billion, but available, previously uncommitted revenues would be less than $1 billion. For each year after the implementation of the mandated longer sentences, the state will have to use *all* funds available for appropriation for the "Three Strikes" law, and then find between $630 million and $1.8 billion *more* in other annual budgets to maintain the increased prison population.

## What Are the Implications of the "Three Strikes" Law for State Finance?

The condition of public finance in California is a major key to educational opportunity. For many years, the state's system of taxes on property, sales, personal income, and corporate profits produced a growing stream of revenues. This stream, along with the state's express commitment to higher educational opportunities at low cost, has kept California's colleges and universities among the nation's most pre-eminent and widely envied around the world. At the same time, the state's fiscal system has met the needs of other policy objectives, particularly the accommodation of a growing prison population. We are concerned that it may no longer be able to do both.

GRAPH TWO
**"Three Strikes" Law vs. State Revenues Available for Appropriation**
(In Millions)

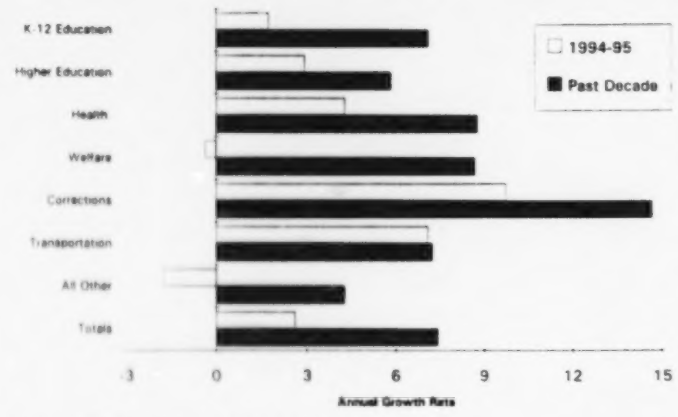



* Source: Department of Corrections, Legislative Estimates Unit, "Population and Fiscal Estimate of the 'Three Strikes' Initiative," February 28, 1994.

** Based on annual state revenues projected by the Department of Finance, January 1993. The assumption is made that Proposition 98, federal mandates, debt service, and other required expenditures will consume 70 percent of the annual increase in state revenues.

GRAPH THREE

**Annual Rate of Growth of Expenditures for Selected Services**




Source: Legislative Analyst's Office, February 28, 1994.

Whether or not the system of state taxation is in need of revision, the current recession has seriously diminished the stream of state revenues. Not since the bitter days of the Great Depression have the state's coffers been so empty.

From these depleted resources, the state has striven, not always successfully, to meet an increasing demand for public services by scaling back in some areas to meet needs in others. Graph Three shows an annual growth rate for the past decade of roughly 7 percent for all state services, about 6 percent for higher education, but about twice that, 15 percent, for corrections.

Graph Four shows a result of this differential growth rate: Correction's share of general fund expenditures now equals that of the University of California and the California State University combined.

## Are There Policy Options for a Less Expensive "Three Strikes" Law?

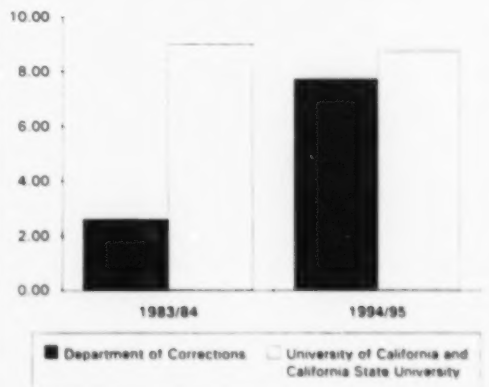
Some authorities in the corrections field have suggested that the "Three Strikes" law, as enacted, casts an unnecessarily wide, inflexible and costly net, and that the law's breadth, mandates and costs may be excessive. Many of these authorities—as well as other public officials—have discussed several modifications of the current law. The following analysis considers three major options in terms of their cost implications.

***Option One.*** As passed, the "Three Strikes" law is one of the most expensive single commitments in California's history, partly because, as noted above, *any* successive felony doubles the second-strike sentence or imposes the third strike's long prison term. By modifying the law's application to cases where the last strike (whether it is the second or the third strike) must be a *violent* or *serious* felony, however, fewer defendants would be subject to it. But those fewer defendants would be the ones at whom the *policy* is directly targeted. For example, Los Angeles District Attorney Gil Garcetti has testified that of some 2,000 defendants with two prior "strikes," 1,500 of the "third strikes" are for nonviolent or nonserious felonies (legislative testimony, June 21, 1994).

***Option Two.*** Even if the law's provisions regarding the third strike remain intact, modifying the law to require that the *second* strike be a serious or violent felony would be another option for reducing costs while sharpening the law's policy objective. Graph

GRAPH FOUR

**Spending as a Percent of State General Fund Expenditures**




Source: Governor's budget for 1985-86 and the Governor's proposed budget for 1994-95.



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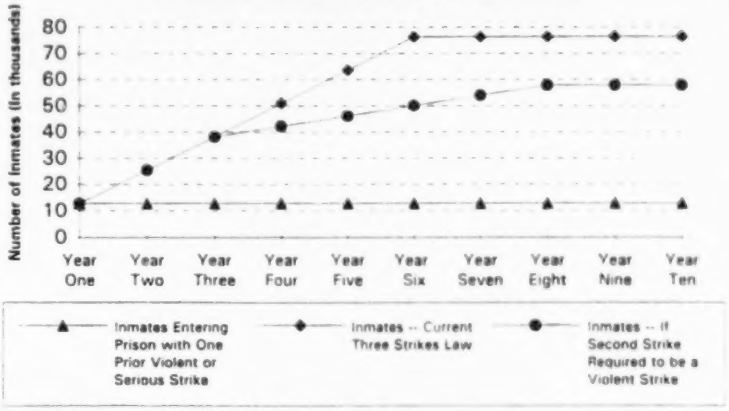
Five projects over ten years the effect of such a modification to second-strike felons only—basically, about one-third of the costs of imprisoning second-strike criminals would be saved.

***Option Three.*** Another possible modification arose during legislative debate, when it was suggested that nonviolent burglary should be removed from the list of "strikes," since such pilfering—while deserving punishment—would not warrant life in prison and its cost to the taxpayers. The Department of Corrections estimates that this one change alone—dropping first degree burglary as a "strike"—would, as shown in Graph Six (see page 5), save more than 60 percent of "Three Strikes'" projected costs.

GRAPH FIVE

**The Impact of Requiring that the Second Strike be a Violent or Serious Felony**




*Assumptions:*

- Everyone would have received a three-year sentence before the "Three Strikes" law became effective.
- No time off for good behavior.
- Current "Three Strikes" law doubles all second felony sentences if the first conviction was for a violent or serious crime.
- Reform law would require second strike to be a serious or violent felony. If so, the three-year sentence is extended by a FIVE-YEAR ENHANCEMENT.
- 69% of second-strike cases are for nonviolent or nonserious felonies (the estimate in LA County, according to legislative testimony of Gil Garcetti, Los Angeles County district attorney, June 21, 1994).

Source: Calculations by MGT Consultants based on legislative testimony of Gil Garcetti, and cost estimates by the Department of Corrections.

Modifications such as these would *not* repeal the mandated longer sentences for those who have had two prior prison terms and who then inflict great bodily injury. The major thrust of state *policy* would remain, but its implementation would focus on those repeat, violent criminals who continue to be a threat to society.

## How Will the "Three Strikes" Law Affect College Opportunity?

According to virtually every authority, state revenue will grow modestly for the remainder of the 1990s. Expenditures for the Department of Corrections have increased from 2.6 percent of the state's general fund in 1983–84 to 7.7 percent in 1994–95. The requirements for lengthy sentences in the "Three Strikes" law drastically reduces future funding for those public services without constitutional protection or federal mandates.

Higher education in California has a special stake in the impact of these increased costs. The University of California, the California State University, and the Student Aid Commission do not enjoy constitutional or statutory fiscal guarantees; they compete annually with other state services, including corrections, for the approximately 30 percent of annual state revenues not automatically committed to other state services. Even the community colleges are vulnerable, for although Proposition 98 commits a certain proportion of state general funds to the public schools *and* the colleges, neither sector is assured individually of any particular share of the guaranteed amount.

The problems and opportunities of California colleges and universities, wholly aside from the "Three Strikes" law, are enormous, and are the primary concern of the Center (see *Time for Decision: California's Legacy and the Future of Higher Education*, The California Higher Education Policy Center, March 1994). Maintaining current levels of access, with no improvements in opportunity for any group, will require accommodating a 50 percent increase in the number of full-time students by 2006. To meet this increased student demand under conditions of stable or relatively minor budgetary increases, higher education is obligated to reform significantly and

GRAPH SIX

**The Cost Savings, if First Degree Burglary is not a Qualifying Strike**

*Note:* These savings are based on the costs for operations and construction above the normal growth in prison population.

*Source:* Department of Corrections, Legislative Estimates Unit, "Population and Fiscal Estimate of the 'Three Strikes' Initiative," February 28, 1994.

to become more cost effective. The Center has urged colleges to move aggressively in these directions. But colleges and universities cannot begin to address the needs of Californians for accessible and affordable higher education if increased mandatory state spending on corrections—and increased mandatory spending generally—forces massive disinvestment in higher education.

Due to this long-term scenario, *there are only three major public policy options*—or some combination of these options—facing the elected representatives and appointed officials who have responsibility for the public system of higher education in California:

- *severely limit enrollment in public colleges and universities,*
- *impose substantially higher student charges, or*
- *increase taxes.*

## Conclusion

The incarceration of repeat and violent criminals is clearly a high priority for many Californians. At the same time, however, the details of how such policy will be implemented require that the public and its elected leaders move beyond emotional rhetoric—justified though it may be—to make rational policy decisions. More cost-effective alternatives should be carefully considered. Californians should insist that their elected leaders who advocate for this expensive law be specific about the sources of financial support and the tradeoffs with other public services, including higher education. The public should also insist that proponents be explicit about which of the three primary options for higher education they favor: limited enrollment, higher student fees, or higher taxes. For as this analysis reveals, it is inconsistent with the current realities of state finance to simultaneously advocate for the "Three Strikes" law in its present form and the preservation of accessible and affordable public colleges and universities.

## Kinds of Felonies

The following are examples—not complete lists—of different kinds of felonies as determined by the penal code. In its present form, the "Three Strikes" law would mandate that so long as the defendant was convicted previously of a violent or a serious felony, the judge would be required to lock him or her up for extensive time, even when the defendant's last offense was neither a violent nor a serious felony.

### "Violent" Felonies

Murder
Mayhem
Many sex crimes (including rape by force)
Any felony in which great bodily injury is inflicted
Car-jacking with a deadly weapon
Robbery of an inhabited dwelling

### "Serious" Felonies

Assault with intent to commit rape or robbery
Assault with a deadly weapon on a peace officer
Arson
Felonies in which the defendant uses a deadly weapon
Some drug sales to minors.

### Other Felonies

Shoplifting within certain dollar ranges
Burglary of an uninhabited dwelling
Drug dealing in smaller amounts
Some drug possessions
Car theft for joy riding

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